TAFF HOTELS SDN BHD

v.

PERMODALAN NASIONAL BHD

HIGH COURT MALAYA, KUALA LUMPUR
STEVE SHIM J
[SUIT NO: D5-22-730-1996]
25 NOVEMBER 1999

EVIDENCE: *Witness - Conversation with counsel during adjournment - Allegation that counsel was coaching witness - Application by opposing counsel to cross-examine witness on conversation with counsel - Whether cross-examination should be allowed - Whether all conversation between counsel and his witness during adjournment prohibited*

This was an application by counsel for the defendant ('DC') to cross-examine a witness for the plaintiff ('PW1') as to what transpired between PW1 and counsel for the plaintiff ('PC') during an adjournment when PW1 was still at the stage of being cross-examined by DC. DC alleged that PW1 and PC were discussing matters pertaining to PW1's cross-examination during the adjournment, thus raising the inference that PC was coaching PW1 in his evidence.

Held:

[1] DC had made a specific allegation that PC was coaching PW1 in his evidence during the adjournment. This allegation was not specifically refuted by PC, thus implying that the allegation might be true. It was therefore fair and proper that DC should be allowed to cross-examine PW1 as to what transpired between PW1 and PC during the adjournment.

Obiter:

[1] A conversation between counsel and his witness during an adjournment on general matters relating to the case as a whole – which is absolutely essential to an effective prosecution or defence – should not attract any adverse implications even though it may transgress into matters arising out of the cross-examination of the witness. Discussions between counsel and his witness during an adjournment are not totally prohibited, and those which are necessary are allowed. Coaching a witness is, however, strictly forbidden.

[Application allowed.]

Case(s) referred to:
Lau Pak Ngam v. R [1966] Crim LR 443 ***(refd)***
Moomin Seman v. PP [1993] 4 CLJ 61 ***(refd)***

For the plaintiff - Ong Kim Buai; M/s Lee Perera & Tan
For the defendant - Subayogan Sinniah; M/s Zainal Abidin & Co

Reported by Gan Peng Chiang

JUDGMENT

Steve Shim J:

This is an application by counsel for the defendant to cross-examine PW1 as to what transpired between him and counsel for the plaintiff during an adjournment. It has been alleged by counsel for the defendant that PW1 and counsel for the plaintiff were seen discussing matters arising out of the cross-examination of PW1 suggesting that PW1 was being coached in his evidence while still in the process of being cross-examined. The application is opposed by counsel for the plaintiff.

Now, there are of course discussions and discussions. I would not think that a discussion between counsel and his witness during an adjournment in matters of a general nature relating to the case as a whole and which is absolutely essential to an effective prosecution or defence of his case should attract any adverse implications even though it may occasionally and by force of necessity transgress into matters arising out of the cross-examination of the witness. Counsel for the defendant has drawn attention to the case *Moomin bin Seman v. PP* [1993] 4 CLJ 61 wherein Richard Tallala J cited with approval the observation of Hogan CJ in the Hong Kong case of *Lau Pak Ngam v. R* [1966] Crim LR 443 which states:

> If an officer – or indeed anyone connected with a case – enters **unnecessarily** into conversation with a witness as to his or her evidence during an adjournment of the witness's testimony, the officer at once exposes himself and the witness to the suggestion that the evidence subsequently given is in some way affected by such conversation and possibly disturbed so as to present a picture more favourable to one side.

The use of the word "unnecessarily" would seem to suggest that there is no total prohibition involved and that there are perhaps occasions where conversations or discussions, which are found to be necessary, are allowed. However, if the discussion is in the nature of coaching a witness in his evidence as to what he is expected to say in the witness-box, then I think, that would be most reprehensible and calls for condemnation in the strongest terms. Here, a specific allegation has been made that there was

coaching by counsel for the plaintiff of PW1 in the discussion between them during an adjournment while PW1 was still under cross-examination. In response, counsel for the plaintiff maintains that she did not (to use her own words) "have any dealings with PW1 behind anybody's back". What that means is not entirely clear. She does not specifically refute the allegation raised by counsel for the defendant which naturally opens the door to an inference that there may be some truth in the allegation. In the circumstances, I think it fair and proper to allow the application.

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